

1 a pledge agreement under which credit is extended and in which the  
2 pledgee is a broker or dealer.

3 (9) "Capitalization" means the recording of an expenditure as an  
4 asset.

5 (10) "Contractor" means an entity which contracts with the  
6 department to provide services to medical care recipients in a facility  
7 and which entity is responsible for operational decisions.

8 (11) "Department" means the department of social and health  
9 services (DSHS) and its employees.

10 (12) "Depreciation" means the systematic distribution of the cost  
11 or other basis of tangible assets, less salvage, over the estimated  
12 useful life of the assets.

13 (13) "Direct care supplies" means medical, pharmaceutical, and  
14 other supplies required for the direct nursing and ancillary care of  
15 medical care recipients.

16 (14) "Entity" means an individual, partnership, corporation, or any  
17 other association of individuals capable of entering enforceable  
18 contracts.

19 (15) "Equity" means the net book value of all tangible and  
20 intangible assets less the recorded value of all liabilities, as  
21 recognized and measured in conformity with generally accepted  
22 accounting principles.

23 (16) "Facility" means a nursing home licensed in accordance with  
24 chapter 18.51 RCW, excepting nursing homes certified as institutions  
25 for mental diseases, or that portion of a hospital licensed in  
26 accordance with chapter 70.41 RCW which operates as a nursing home.

27 (17) "Fair market value" means the replacement cost of an asset  
28 less observed physical depreciation on the date for which the market  
29 value is being determined.

30 (18) "Financial statements" means statements prepared and presented  
31 in conformity with generally accepted accounting principles including,  
32 but not limited to, balance sheet, statement of operations, statement  
33 of changes in financial position, and related notes.

34 (19) "Generally accepted accounting principles" means accounting  
principles approved by the financial accounting standards board (FASB).

5 (20) "Generally accepted auditing standards" means auditing  
37 standards approved by the American institute of certified public  
38 accountants (AICPA).

(21) "Goodwill" means the excess of the price paid for a business over the fair market value of all other identifiable, tangible, and intangible assets acquired.

(22) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architect's fees, and engineering studies.

(23) "Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

(24) "Joint facility costs" means any costs which represent resources which benefit more than one facility, or one facility and any other entity.

(25) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination (due to any cause other than death or divorce) or addition of any party to the contract, expiration, or modification of any lease term in effect on January 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase the total lease payment obligation of the lessee, shall not be considered modification of a lease term.

(26) "Medical care program" means medical assistance provided under RCW 74.09.500 or authorized state medical care services.

(27) "Medical care recipient" or "recipient" means an individual determined eligible by the department for the services provided in chapter 74.09 RCW.

(28) "Net book value" means the historical cost of an asset less accumulated depreciation.

(29) "Net invested funds" means the net book value of tangible fixed assets employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles, plus an allowance for working capital which shall be five percent of the product of the per patient day rate

1 multiplied by the prior calendar year reported total patient days of  
2 each contractor.

3 (30) "Operating lease" means a lease under which rental or lease  
4 expenses are included in current expenses in accordance with generally  
5 accepted accounting principles.

6 (31) "Owner" means a sole proprietor, general or limited partners,  
7 and beneficial interest holders of five percent or more of a  
8 corporation's outstanding stock.

9 (32) "Ownership interest" means all interests beneficially owned by  
10 a person, calculated in the aggregate, regardless of the form which  
11 such beneficial ownership takes.

12 (33) "Patient day" or "~~((client))~~ resident day" means a calendar  
13 day of care provided to a nursing facility resident, which will include  
14 the day of admission and exclude the day of discharge; except that,  
15 when admission and discharge occur on the same day, one day of care  
16 shall be deemed to exist. A "client day" or "recipient day" means a  
17 calendar day of care provided to a medical care recipient determined  
18 eligible by the department for services provided under chapter 74.09  
19 RCW, subject to the same conditions regarding admission and discharge  
20 applicable to a patient day or resident day of care.

21 (34) "Professionally designated real estate appraiser" means an  
22 individual who is regularly engaged in the business of providing real  
23 estate valuation services for a fee, and who is deemed qualified by a  
24 nationally recognized real estate appraisal educational organization on  
25 the basis of extensive practical appraisal experience, including the  
26 writing of real estate valuation reports as well as the passing of  
27 written examinations on valuation practice and theory, and who by  
28 virtue of membership in such organization is required to subscribe and  
29 adhere to certain standards of professional practice as such  
30 organization prescribes.

31 (35) "Qualified therapist" means:

32 (a) An activities specialist who has specialized education,  
33 training, or experience as specified by the department;

34 (b) An audiologist who is eligible for a certificate of clinical  
35 competence in audiology or who has the equivalent education and  
36 clinical experience;

37 (c) A mental health professional as defined by chapter 71.05 RCW;

38 (d) A mental retardation professional who is either a qualified  
39 therapist or a therapist approved by the department who has had

1 specialized training or one year's experience in treating or working  
2 with the mentally retarded or developmentally disabled;

3 (e) A social worker who is a graduate of a school of social work;

4 (f) A speech pathologist who is eligible for a certificate of  
5 clinical competence in speech pathology or who has the equivalent  
6 education and clinical experience;

7 (g) A physical therapist as defined by chapter 18.74 RCW;

8 (h) An occupational therapist who is a graduate of a program in  
9 occupational therapy, or who has the equivalent of such education or  
10 training; and

11 (i) A respiratory care practitioner certified under chapter 18.89  
12 RCW.

13 (36) "Questioned costs" means those costs which have been  
14 determined in accordance with generally accepted accounting principles  
15 but which may constitute disallowed costs or departures from the  
16 provisions of this chapter or rules and regulations adopted by the  
17 department.

18 (37) "Rebased rate" or "cost-rebased rate" means a facility-  
19 specific rate assigned to a nursing facility for a particular rate  
20 period established on desk-reviewed, adjusted costs reported for that  
21 facility covering at least six months of a prior calendar year.

22 (38) "Records" means those data supporting all financial statements  
23 and cost reports including, but not limited to, all general and  
24 subsidiary ledgers, books of original entry, and transaction  
25 documentation, however such data are maintained.

26 ((+38+)) (39) "Related organization" means an entity which is under  
27 common ownership and/or control with, or has control of, or is  
28 controlled by, the contractor.

29 (a) "Common ownership" exists when an entity is the beneficial  
30 owner of five percent or more ownership interest in the contractor and  
31 any other entity.

32 (b) "Control" exists where an entity has the power, directly or  
33 indirectly, significantly to influence or direct the actions or  
34 policies of an organization or institution, whether or not it is  
35 legally enforceable and however it is exercisable or exercised.

36 ((+39+)) (40) "Restricted fund" means those funds the principal  
37 and/or income of which is limited by agreement with or direction of the  
38 donor to a specific purpose.

1        ~~((+40+))~~ (41) "Secretary" means the secretary of the department of  
2 social and health services.

3        ~~((+41+))~~ (42) "Title XIX" or "Medicaid" means the 1965 amendments  
4 to the social security act, P.L. 89-07, as amended.

5        ~~((+42+))~~ (43) "Physical plant capital improvement" means a  
6 capitalized improvement that is limited to an improvement to the  
7 building or the related physical plant.

8        Sec. 91. RCW 74.46.105 and 1985 c 361 s 10 are each amended to  
9 read as follows:

10        Cost reports and patient trust accounts of contractors shall be  
11 field audited by the department, either by department staff or by  
12 auditors under contract to the department, in accordance with the  
13 provisions of this chapter. The department when it deems necessary to  
14 assure the accuracy of cost reports may review any underlying financial  
15 statements or other records upon which the cost reports are based. The  
16 department shall have the authority to accept or reject audits which  
17 fail to satisfy the requirements of this section or which are performed  
18 by auditors who violate any of the rules of this section. Department  
19 audits of the cost reports and patient trust accounts shall be  
20 conducted as follows:

21        (1) Each year the department will provide for field audit of the  
22 cost report, statistical reports, and patient trust funds, as  
23 established by RCW 74.46.700, of all or a sample of reporting  
24 facilities selected by profiles of costs, exceptions, contract  
25 terminations, upon special requests or other factors determined by the  
26 department.

27        (2) Beginning with audits for calendar year ~~((1983, up to one~~  
28 ~~hundred percent of contractors cost reports and patient care trust fund~~  
29 ~~accounts shall be audited. PROVIDED, That each contractor shall be~~  
30 ~~audited at least once in every three year period))~~ 1993, contractors'  
31 cost reports and resident care trust fund accounts shall be audited  
32 periodically as determined necessary by the department.

33        (3) Facilities ~~((shall be selected for sample audits within one~~  
34 ~~hundred twenty days of submission of a correct and complete cost~~  
35 ~~report, and))~~ shall be ~~((so))~~ informed of the department's intent to  
36 audit at least ten working days before the commencement of an audit of  
37 a facility's cost report or resident trust fund accounts. ((Audits so  
38 ~~scheduled shall be completed within one year of selection.))~~

(4) Where an audit for a recent reporting or trust fund period discloses material discrepancies, undocumented costs or mishandling of patient trust funds, auditors may examine prior unaudited periods, for indication of similar material discrepancies, undocumented costs or mishandling of patient trust funds for not more than two reporting periods preceding the facility reporting period selected in the sample.

(5) The audit will result in a schedule summarizing appropriate adjustments to the contractor's cost report. These adjustments will include an explanation for the adjustment, the general ledger account or account group, and the dollar amount. Patient trust fund audits shall be reported separately and in accordance with RCW 74.46.700.

(6) Audits shall meet generally accepted auditing standards as promulgated by the American institute of certified public accountants and the standards for audit of governmental organizations, programs, activities and functions as published by the comptroller general of the United States. Audits shall be supervised or reviewed by a certified public accountant.

(7) No auditor under contract with or employed by the department to perform audits in accordance with the provisions of this chapter shall:

(a) Have had direct or indirect financial interest in the ownership, financing or operation of a nursing home in this state during the period covered by the audits;

(b) Acquire or commit to acquire any direct or indirect financial interest in the ownership, financing or operation of a nursing home in this state during said auditor's employment or contract with the department;

(c) Accept as a client any nursing home in this state during or within two years of termination of said auditor's contract or employment with the department.

(8) Audits shall be conducted by auditors who are otherwise independent as determined by the standards of independence established by the American institute of certified public accountants.

(9) All audit rules adopted after March 31, 1984, shall be published before the beginning of the cost report year to which they apply.

Sec. 92. RCW 74.46.115 and 1983 1st ex.s. c 67 s 6 are each amended to read as follows:

The office of the state auditor shall (~~annually~~) at least once in every three state fiscal years commencing July 1, 1995, review the performance of the department to ensure that departmental audits are conducted in accordance with generally accepted (~~accounting principles and~~) auditing standards.

Sec. 93. RCW 74.46.160 and 1985 c 361 s 12 are each amended to read as follows:

(1) Within one hundred twenty days after receipt of the proposed preliminary settlement, the department shall verify the accuracy of the proposal and shall issue a preliminary settlement report by cost center to the contractor which fully substantiates disallowed costs, refunds, underpayments, or adjustments to the proposed preliminary settlement.

(2) After completion of the audit process, including exhaustion or mutual termination of (~~reviews and~~) any administrative appeals (of) or exception procedure used by the contractor to contest audit findings or determinations, but not including any judicial review available to and commenced by the contractor, the department will submit a final settlement report by cost center to the contractor which fully substantiates disallowed costs, refunds, underpayments, or adjustments to the contractor's cost report. (~~Where the contractor is pursuing judicial or administrative review or appeal in good faith regarding audit findings or determinations, the department may issue a partial final settlement to recover overpayments based on audit adjustments not in dispute.~~)

Sec. 94. RCW 74.46.170 and 1983 1st ex.s. c 67 s 10 are each amended to read as follows:

(1) A contractor shall have (~~thirty~~) a period of days, to be established by the department in rule, after the date the preliminary or final settlement report is submitted to the contractor to contest a settlement determination under the administrative appeals or exception procedure established by the department pursuant to RCW 74.46.780. Any such administrative review of a settlement shall be limited to calculation of the settlement or the application of settlement principles and rules, or both, and shall not examine or reexamine payment rate or audit issues. After the (~~thirty-day~~) period established by the department in rule has expired, a preliminary or final settlement will not be subject to review.

(2) A preliminary settlement report as issued by the department will become the final settlement report if no audit has been scheduled within twelve calendar months following the department's issuance of a preliminary settlement report to the contractor.

(3) A settlement will be reopened if necessary to make adjustments for findings resulting from an audit performed pursuant to RCW 74.46.105(4).

Sec. 95. RCW 74.46.180 and 1993 sp.s. c 13 s 2 are each amended to read as follows:

(1) The ~~((state))~~ department shall make payment of any underpayments to which a contractor is entitled as determined by the department under the provisions of this chapter within ~~((thirty))~~ sixty days after the date the preliminary or final settlement report is submitted to the contractor and the department shall pay interest at the rate of one percent per month on any unpaid preliminary or final settlement balance still due the contractor after such time, accruing from sixty days after the preliminary or final settlement report is submitted to the contractor, and no interest shall accrue or be paid for any period prior to this date: PROVIDED, That any increase in a preliminary or final settlement amount due the contractor resulting from a final administrative or judicial decision shall also bear interest until paid at the rate of one percent per month, accruing from sixty days after the preliminary or final settlement was submitted to the contractor. The department shall pay no interest on amounts due a contractor other than amounts determined by preliminary or final settlement as provided in this subsection.

(2) A contractor found, under a preliminary or final settlement issued by the department, to have received either overpayments or erroneous payments ~~((under a preliminary or final settlement))~~, to which the contractor is not entitled as determined by the department under the provisions of this chapter, shall refund such erroneous payments or overpayments to the ~~((state))~~ department within ~~((thirty))~~ sixty days after the date the preliminary or final settlement report is submitted to the contractor, subject to the provisions of subsections

(3), (4), and ~~((+7))~~ (6) of this section, PROVIDED, That for all preliminary or final settlements issued on and after July 1, 1995, regardless of what period a settlement covers, neither a timely filed request to pursue the department's administrative appeals or exception

1 procedure nor commencement of judicial review, as may be available to  
2 the contractor in law, contesting the settlement, erroneous payments or  
3 overpayments shall delay recovery. A contractor shall pay interest at  
4 the rate of one percent per month on any unpaid preliminary or final  
5 settlement balance still due the department sixty days after the  
6 preliminary or final settlement report is submitted to the contractor,  
7 accruing from this date: PROVIDED Further, That the department shall  
8 refund interest collected for preliminary and settlement amounts the  
9 contractor was entitled to retain as subsequently determined by final  
10 administrative or judicial decision.

11 (3) Within the cost centers of nursing services and food, all  
12 savings resulting from the respective allowable costs being lower than  
13 the respective reimbursement rate paid to the contractor during the  
14 report period shall be refunded to the department. However, in  
15 computing a preliminary or final settlement, savings in a cost center  
16 may be shifted to cover a deficit in another cost center up to the  
17 amount of any savings. Not more than twenty percent of the rate in a  
18 cost center may be shifted into that cost center and no shifting may be  
19 made into the property cost center. There shall be no shifting out of  
20 nursing services, and savings in food shall be shifted only to cover  
21 deficits in the nursing services cost center. There shall be no  
22 shifting from the operational to the administrative cost center.

23 (4) Within the administrative and property cost centers, the  
24 contractor shall retain at least fifty percent, but not more than  
25 seventy-five percent, of any savings resulting from the respective  
26 audited allowable costs being lower than the respective reimbursement  
27 rates paid to the contractor during the report period multiplied by the  
28 number of authorized medical care client days in which said rates were  
29 in effect, except that no savings may be retained if reported costs in  
30 the administrative and property cost centers exceed audited allowable  
31 costs in these cost areas by a total of ten cents or more per patient  
32 day. The secretary, by rule, shall establish the basis for the  
33 specific percentages of savings to the contractors. Such rules may  
34 provide for differences in the percentages allowed for each cost center  
35 to individual facilities based on performance measures related to  
36 administrative efficiency.

37 (5) All return on investment rate payments provided by RCW  
38 74.46.530 shall be retained by the contractor to the extent net  
39 invested funds are substantiated by department field audit. Any

1 industrial insurance dividend or premium discount under RCW 51.16.035  
2 shall be retained by the contractor to the extent that such dividend or  
3 premium discount is attributable to the contractor's private patients.

4 (6) In the event the contractor fails to make repayment in the time  
5 provided in subsection (2) of this section, the department shall  
6 either:

7 (a) Deduct the amount of refund due the department, plus any  
8 interest accrued under ~~((RCW 43.20B.695))~~ subsection (2) of this  
9 section, from payment amounts due the contractor; or

10 (b) In the instance the contract has been terminated, (i) deduct  
11 the amount of refund due the department, plus interest assessed at the  
12 rate and in the manner provided in ~~((RCW 43.20B.695))~~ subsection (2) of  
13 this section, from any payments due; or (ii) recover the amount due,  
14 plus any interest assessed under ~~((RCW 43.20B.695,))~~ subsection (2) of  
15 this section from security posted with or otherwise obtained by the  
16 department or by any other lawful means.

17 (7) ~~((Where the facility is pursuing timely filed judicial or~~  
18 ~~administrative remedies in good faith regarding settlement issues, the~~  
19 ~~contractor need not refund nor shall the department withhold from the~~  
20 ~~facility current payment amounts the department claims to be due from~~  
21 ~~the facility but which are specifically disputed by the contractor.))~~  
22 For all erroneous payments and overpayments determined by preliminary  
23 or final settlements issued before July 1, 1995, and not yet recovered  
24 by the department because they are specifically disputed by the  
25 contractor in a timely filed administrative or judicial review, if the  
26 judicial or administrative remedy sought by the facility is not granted  
27 after all appeals are exhausted or mutually terminated, the facility  
28 shall make payment of such amounts due plus interest accrued from the  
29 date of filing of the appeal, as payable on judgments, within sixty  
30 days of the date such decision is made.

31 Sec. 96. RCW 74.46.190 and 1983 1st ex.s. c 67 s 12 are each  
32 amended to read as follows:

33 (1) The substance of a transaction will prevail over its form.

34 (2) All documented costs which are ordinary, necessary, related to  
35 care of medical care recipients, and not expressly unallowable, are to  
36 be allowable. Costs of providing ancillary care are allowable, subject  
37 to any applicable cost center limit contained in this chapter, provided  
38 documentation establishes the costs were incurred for medical care